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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,260	01/11/2000	Pavel Hamet	1171-99	4119

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EXAMINER
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MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/480,260

Applicant(s)

HAMET ET AL.

Examiner

Michael V. Meller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The restriction of record is maintained for the reasons of record.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton '457, Bolton '030 or Tremblay et al. in view of applicant's admission of what is known in the art at page 6, first full paragraph of the instant specification.

The claims are drawn to a method for alleviating or protecting against the symptoms of a neurological medical disorder involving accelerated rates of apoptosis or necrosis in a mammalian body.

Since the instant specification at page 6 teaches that "neurological disorders are associated with increases in apoptosis is known" and "such disorders (referring to physical trauma) are associated with increases in apoptosis is known" and since the references are treating such physical traumas or neurological diseases with the same process as that which is claimed then it would have been obvious to perform a method for alleviating or protecting against the symptoms of a neurological medical disorder involving accelerated rates of apoptosis or necrosis in a mammalian body by performing

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the method of the references since such diseases/conditions are already noted by the references as being able to be treated by the claimed method and applicant notes that these conditions are associated with an increase in apoptosis and the claimed method applicant wants to alleviate or protect against the symptoms of a neurological disorder involving accelerated rates of apoptosis thus since the claims want to decrease the amount of apoptosis and the specification teaches that neurological diseases such as alzheimers are the result of increased apoptosis then using a method to decrease the amount of apoptosis would have been desirable and well within the purview of the skilled artisan to do since applicants have revealed that is is known in the art that neurological diseases such as alzheimers are associated with increases in apoptosis.

Further it is noted that applicant never addresses the fact that Bolton '030 does in fact mention that the claimed method can be used to treat neurological disorders. This is a clear statement on the desirability of the reference to treat neurological disorders such as a well known one in the art such as alzheimer's.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-28 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable

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one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

There is no support in the instant specification for treating a neurological disorder using the claimed method. The specification fails to provide data and/or other evidence in which to enable the invention. Without such data in an art as unpredictable as biotechnology one of ordinary skill in the art would have no way of knowing if the claimed method would be able to perform the claimed method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

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A handwritten signature in black ink, appearing to read 'M. V. Meller', with a long horizontal flourish extending to the right.

Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM  
February 13, 2003